



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,998	10/02/2003	Larry A. Davies	29554/04002	9247

24024 7590 08/01/2005

CALFEE HALTER & GRISWOLD, LLP  
800 SUPERIOR AVENUE  
SUITE 1400  
CLEVELAND, OH 44114

EXAMINER
----------

GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
----------	--------------

3612

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/677,998

Applicant(s)

DAVIES ET AL.

Examiner

Hilary Gutman

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-14 and 17 is/are allowed.
- 6) ☒ Claim(s) 1,2,15,16 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 24 is/are objected to.
- 8) ☒ Claim(s) 21-23,25 and 26 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

*KL*

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 25-26 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/4/04.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rod lock, cable tie, cable seal, bolt seal, lead and wire seal, or combination thereof of claim 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

Art Unit: 3612

and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 15-16, and 18-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Page.

Page (1,052,747) discloses a container for transporting cargo in a secured manner, comprising: a. a first wall, a second wall, a top, and a bottom; b. a temporary divider (c, d, Fig 1) selectively located in the container for separating the container into at least a first compartment and a second compartment; and at least one lock (u, t, Figure 3) for securing the temporary divider against unauthorized removal; wherein access to the cargo in the first compartment is prevented without first removing the at least one lock and the temporary divider (c, d), while access to cargo in the second compartment is unaffected by the at least one lock and the temporary divider.

With regard to claim 2, the container comprises a rail car.

For claim 15, Page discloses a container for transporting cargo, comprising at least a first and a second compartment, wherein at least the first compartment is secured by separately locking it from the second compartment for secure transportation of cargo therein and access to the second compartment is available without unlocking the first compartment.

With regard to claim 16, a temporary divider (c, d) is further provided for dividing the container into the first compartment and the second compartment and at least one lock (t, u) cooperating with the temporary divider to separately lock the first compartment from the second compartment.

For claim 18, Page inherently discloses a method for transporting secured cargo in a container having a first end, comprising a. loading cargo into the first end of the container; b. erecting a barrier (Figure 1) such that the barrier and the first end define a compartment containing the cargo, the compartment having a smaller volume than the container; c. locking the barrier (Figure 3) to create a locked compartment, the cargo therein being secured cargo; and d. transporting the container to a destination without removing, transferring, or handling the secured cargo in the locked compartment.

For claim 19, Page inherently discloses a cargo control system for transporting cargo, comprising a. a container, b. material (Figure 1) for constructing a removable bulkhead to be placed within the container to define a compartment having a volume smaller than the volume of the container; c. at least one lock (Figure 3) for locking the removable bulkhead; d. means (such as the eyes of an operator or cargo control system user) for identifying the at least one lock; e. means (such as the eyes viewing spilt cargo) for verifying that the at least one lock has not been unlocked, removed, or breached during transport of the container.

For claim 20, Page inherently discloses a method for providing for the secure transport of a consignor's cargo from an origin, comprising a. placing the consignor's cargo into a container; b. positioning the container with a removable, lockable divider such that the consignor's cargo is located in a compartment within the container having a smaller volume than the volume of the

Art Unit: 3612

container; c. locking the removable, lockable divider with a lock such that the compartment is a secured compartment; d. enabling non-secured cargo to be placed into the container outside of the secured compartment; e. transporting the consignor's cargo in the secured compartment, without allowing access to the cargo in the secured compartment, to a destination specified by the consignor.

***Allowable Subject Matter***

5. Claims 6-14 and 17 are allowed.
6. Claims 3-5 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 4/28/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the locking means does not secure the divider against unauthorized removal, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

With regard to the argument that access to the compartment is not prevented without removing the lock and the temporary divider, the examiner disagrees and believes that the lock (t, u) and temporary divider (c, d) must be moved to access the compartment.

The examiner believes Page discloses every element of claim 1 as broadly recited and interpreted. With regard to claim 19, the applicant argues that Page does not disclose means for identifying the lock and means for verifying that the lock has not been unlocked, removed, or breached. The examiner disagrees and as noted in the rejection believes that a means (such as the eyes of an operator or cargo control system user) for identifying the at least one lock and a means (such as the eyes viewing spilt cargo) for verifying that the at least one lock has not been unlocked, removed, or breached during transport of the container are indeed provided by Page.

The rejections set forth above are hereby maintained.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3612

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10. **Any response to this final action should be mailed to:**


Box AF  
Assistant Commissioner for Patents  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9327, (for formal communications; please mark "EXPEDITED PROCEDURE")

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").

  
Hilary Gutman  
July 26, 2005